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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

ALAN BERNARD and LINDA BERNARD,
Petitioners,

vs.

JEFFREY C. COYNE, Chapter 7 Trustee,
CLEMENT SHEAFFER and MARY SHEAFFER,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RICHARD MICHAEL MONEYMAKER
Counsel of Record

LAW FIRM OF RICHARD M. MONEYMAKER

700 South Flower Street
Suite 2102
Los Angeles, California 90017
(213) 622-1088

Attorneys for Petitioners
ALAN BERNARD and LINDA BERNARD

Lawyers Brief Service • Appellate Brief Printers • (213) 613-1013 • (714) 720-1510

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QUESTIONS PRESENTED

1. Does the Ninth Circuit Court of Appeals' holding that a bankruptcy trustee may sell a debtor's homestead even though the trustee failed to timely object to the debtor's homestead exemption claim conflict with this Court's decision in Taylor v. Freeland & Kronz, as well as a decision of the Eleventh Circuit Court of Appeals.

2. Does the Ninth Circuit Court of Appeals' holding that a bankruptcy trustee may reopen the time to object to a debtor's exemption claim by setting an additional debtor's meeting of creditors after the initial meeting had already been concluded conflict with this Court's decision in Taylor v. Freeland & Kronz.

3. Did the Ninth Circuit Court of Appeals properly interpret California's

exemption statutes regarding annuity policies.

4. Did Ninth Circuit Court of Appeals Judge Alex Kozinski err in declining to disqualify himself from hearing this matter notwithstanding his marriage to the supervising United States trustee for the chapter 7 trustee Jeffrey C. Coyne, a party herein?

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IN THE
SUPREME COURT OF THE UNITED STATES
October TERM, 1994

ALAN BERNARD and LINDA BERNARD

Petitioners,

v.

JEFFREY C. COYNE, Chapter 7 Trustee,
CLEMENT SHEAFFER and MARY SHEAFFER

Respondents,

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

The Petitioners respectfully pray that a Writ of Certiorari issue to review a decision of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Ninth Circuit is reprinted as Appendix A herein. The citation to the Opinion is Bernard v. Coyne (In re Bernard), 40 F.3d 1028 (9th

Cir. 1994).

Before the Opinion was handed down, Alan and Linda Bernard filed with the Ninth Circuit a motion requesting that the Honorable Alex Kozinski disqualify himself from participating in the consideration of this matter. The Order denying the Bernards' disqualification motion was filed by Judge Kozinski on July 29, 1994 and is reprinted as Appendix B herein. The citation to the Order is Bernard v. Coyne (In re Bernard), 31 F.3d 842 (9th Cir. 1994).

The Order of the United States District Court, Central District of California, which was not published, is reprinted as Appendix C herein.

The Order of the United States Bankruptcy Court, Central District of California, which also was not published, is reprinted as

Appendix D herein.

No testimony was taken at the hearing before the trial court, and no findings of facts and conclusions of law were filed by the trial court. Thus, no findings of fact or conclusions of law are reprinted herein.

JURISDICTION

The Opinion of the Court of Appeals for the Ninth Circuit was filed on November 21, 1994, affirming the Order of the United States District Court, Central District of California, which, in turn, affirmed the Order of the United States Bankruptcy Court, Central District of California, in favor of the Respondents. This Court's jurisdiction is invoked with respect to the Opinion pursuant to 28 U.S.C. Section 1254(1).

The Order of Judge Kozinski denying the Bernards' request that he disqualify

himself from participating in this matter is an interlocutory order and, thus, is appealable only in conjunction with the Opinion. See Air Line Pilots Ass'n v. UAL Corp., 897 F.2d 1394, 1397 (7th Cir. 1990)(citing Hughes Tool Co. v. Trans World Airlines, Inc., 409 U.S. 363, 365 n.1, 93 S. Ct. 647, 650 n.1, 34 L. Ed. 2d 577, 581 (1973)); see also Cleveland v. Krupansky, 619 F.2d 576, 578 (6th Cir. 1980); Scarrella v. Midwest Fed. Sav. & Loan, 536 F.2d 1207, 1210 (8th Cir. 1976)(citing Dubnoff v. Goldstein, 385 F.2d 717 (2d Cir. 1967); Albert v. U.S. District Court for the W.D. of Michigan, 283 F.2d 61 (6th Cir. 1960), cert. denied, 365 U.S. 828, 81 S. Ct. 713, 5 L. Ed. 2d 706 (1961)). This Court's jurisdiction is invoked with respect to the Order pursuant to 28 U.S.C. Section 1254(1).

STATUTES AND RULES INVOLVED

The first question involved in this case is whether, under National Bankruptcy Rule 4003 and Section 522(l) of the Bankruptcy Code, a bankruptcy trustee may sell a debtor's homestead even though the trustee failed to file a timely objection to the debtor's homestead exemption claim.

Rule 4003 provides in pertinent part that:

> "The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors . . . or the filing of any amendment to the list or supplemental schedules . . . . In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly

claimed."

(emphasis added).

Section 522(l) provides in pertinent part that:

"The debtor shall file a list of property that the debtor claims as exempt . . . . Unless a party in interest objects, the property claimed as exempt on such list is exempt."

(emphasis added).

The second question involved in this case is whether, under National Bankruptcy Rule 4003, a bankruptcy trustee may reopen the time to object to a debtor's exemption claims by resetting the debtor's meeting of creditors.

The third question involved in this case is whether the Bernards' claim of exemption with regard to their annuity policy should have been upheld pursuant to California Code of Civil Procedure

Section 704.100.

Section 704.100 provides in pertinent part that:

> "(a) Unmatured life insurance policies (including . . . annuity policies), but not the loan value of such policies, are exempt without making a claim. . . .
>
> (c) Benefits from matured life insurance policies (including . . . annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor."

(emphasis added).

The fourth question involved in this case is whether Judge Kozinski, based on his wife's relationship as the supervising United States trustee for Coyne, should have disqualified himself

from hearing the Bernards' appeal in this matter pursuant to Section 455 of Title 28 of the United States Code. Section 455 reads in pertinent part as follows:

> (a) Any . . . judge . . . of the United states shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (4) He knows that . . . his spouse . . . has a financial interest in the subject matter in controversy . . . or any other interest that could be affected by the outcome of the proceeding;
>
> (5) He or his spouse . . . ;
>
> (i) Is a party to the proceeding, or an officer,

director or trustee of a party;

(iii) Is known by the Judge to have an interest that could be substantially affected by the outcome of the proceeding;

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(4) "financial interest" means . . . a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party . . . .

(emphasis added).

STATEMENT OF THE CASE

This case involves four issues. The first issue relates to whether a

debtor's homestead may be sold by the debtor's bankruptcy trustee even though no timely objection was ever filed to the debtor's homestead exemption claim. The second issue relates to whether a bankruptcy trustee may reopen the time for objecting to a debtor's exemption claim by simply resetting the debtor's meeting of creditors. The third issue relates to whether an annuity policy may properly may be claimed as exempt under California's exemption statutes. The fourth issue relates to whether a judge should disqualify himself from hearing a matter involving a bankruptcy trustee where the judge's wife is the supervising United States trustee for the bankruptcy trustee.

On the first issue, the Opinion of the Ninth Circuit Court of Appeals is in conflict with decisions of the United

States Supreme Court and the Eleventh Circuit Court of Appeals. The United States Supreme Court and the Eleventh Circuit Court of Appeals have both held that any objection to property which a debtor has claimed as exempt must be filed within 30 days of the debtor's meeting of creditors. Otherwise, the property claimed as exempt passes out of the debtor's bankruptcy estate and becomes the debtor's property. In contrast, the Ninth Circuit has now held that a bankruptcy trustee retains a perpetual right to sell a debtor's exempt homestead even where no timely exemption objection has been filed with respect to the homestead.

On the second issue, the Opinion of the Ninth Circuit Court of Appeals is in conflict with a decision of the United States Supreme Court. The United States

Supreme Court has held that a trustee has 30 days from a debtor's initial meeting of creditors to object to the debtor's exemption claims. And if no such objection is filed, the property claimed as exempt passes out of the debtor's bankruptcy estate and becomes the debtor's property. In contrast, the Ninth Circuit has now held that a bankruptcy trustee may circumvent the 30 day deadline by arbitrarily 'resetting' the debtor's meeting of creditors and then filing an exemption objection within the 'new' 30 day time period.

With respect to the third issue, the Opinion of the Ninth Circuit of Appeals fails to properly interpret California's exemption statutes. In the Opinion, the Ninth Circuit states that the exemptions provided for in Section 704.100 of the California Code of Civil Procedure do

not apply to annuity policies.

However, a plain reading of Section 704.100 shows that the exemptions provided for therein clearly do apply to annuity policies. See, e.g. Cal. Civ. Proc. Code § 704.100(a)("Unmatured life insurance policies (including . . . annuity policies), but not the loan value of such policies, are exempt without making a claim")(emphasis added); see also Cal. Civ. Proc. Code § 704.100(c)("Benefits from matured life insurance policies (including . . . annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor")(emphasis added).

With respect to the fourth issue, the Order of Ninth Circuit Court Judge Alex Kozinski is in conflict with certain

applicable portions of Section 455 of Title 28 of the United States Code. Specifically, Section 455(b)(5)(i) of Title 28 states that a judge "shall" disqualify himself if "his spouse . . . [i]s a party to the proceeding, or an officer, director or trustee of a party . . . ." Section 455(b)(4) of Title 28 further states that a judge "shall" disqualify himself if he knows that "his spouse . . . has a financial interest in the subject matter in controversy . . . ." Section 455(d)(4) of Title 28 goes on to define the words "financial interest" as meaning "a relationship as director, adviser, or other active participant in the affairs of a party . . . ."

In this case, Judge Kozinski's wife, Marcy J.K. Tiffany, is the United States trustee in charge of appointing and

supervising the bankruptcy trustee herein, Jeffrey C. Coyne, who is a party to this proceeding. See 28 U.S.C. § 586(a)(1)("Each United States trustee, within the region for which such United States trustee is appointed, shall . . . establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under chapter 7 of title 11 . . . ."). Tiffany, in her role of "appoint[ing] . . . and supervis[ing]" Jeffrey C. Coyne, is, thus, not only a "trustee of a party" to this proceeding, but she is also an "active participant in the affairs" of a party to this proceeding by virtue of her authority to hire and fire Coyne. 28 U.S.C. § 586(a)(1); 28 U.S.C. § 455(b)(5)(i); 28 U.S.C. § 455(d)(4). As a result, because of Tiffany's

relationship as the supervising United States trustee for Coyne, Judge Kozinski's decision not to disqualify himself in this matter conflicts with Sections 455(b)(4) and 455(b)(5)(i) of Title 28.

For a number of reasons, hearing this case is of crucial importance. First, if the Ninth Circuit's ruling is allowed to stand it will eliminate the need for bankruptcy trustees to file timely objections to debtors' exemption claims, thus putting debtors in the untenable situation of never knowing when their exempt property is truly free from challenge. Second, the Ninth Circuit's ruling will effectively eliminate the ability of debtors to exempt certain assets which are essential to their respective fresh starts, including debtors' homesteads. Finally, hearing

this case is important because a significant question is presented as to when federal judges are required to disqualify themselves from hearing matters involving their spouses.

BASIS FOR FEDERAL JURISDICTION

The jurisdiction of the United States Bankruptcy Court for the Central District of California to consider the issue of the allowability of the Bernards' exemption claims is provided by 28 U.S.C. Section 157(b)(2)(B) which grants bankruptcy courts jurisdiction to hear core proceedings involving the allowance or disallowance of exemption claims.

The jurisdiction of the United States District Court for the Central District of California to hear the Bernards'

timely appeal from the bankruptcy court's final order against the Bernards is provided by 28 U.S.C. Section 158(a) which grants district courts jurisdiction to hear appeals from final orders of bankruptcy courts.

The jurisdiction of the United States Court of Appeals for the Ninth Circuit to hear the Bernards' timely Appeal from the district court is provided by Section 28 U.S.C. Section 158(d) which grants the circuit courts of appeals jurisdiction to hear appeals from final orders of district courts entered pursuant to 28 U.S.C. Section 158(a).

STATEMENT OF FACTS

On October 7, 1991, Alan and Linda Bernard filed a voluntary chapter 7 petition in the United States Bankruptcy Court for the Central District of California. Among the assets listed in

the Bernards' petition was their homestead, an annuity policy, and certain wages Mr. Bernard had earned prepetition. A copy of Schedule A from the Bernards' bankruptcy petition, which sets forth the Bernards' real property assets as of October 7, 1991, is reprinted as Appendix E herein. A copy of Schedule B from the Bernards' bankruptcy petition, which sets forth the Bernards' personal property assets as of October 7, 1991, is reprinted as Appendix F herein.

In Schedule A, the Bernards scheduled the value of their homestead at $400,000.00 and the amount of secured debt on the homestead at $412,000.00. See Appendix E reprinted herein. In Schedule B, the Bernards scheduled the value of their annuity policy (actually two policies within one) at $252,231.74

and the value of Mr. Bernards' prepetition wages earned within 90 days of filing for bankruptcy at $5,000.00. See Appendix F reprinted herein.

The Bernards then claimed the homestead, the annuity policy and the prepetition wages as exempt on Schedule C of their petition. A copy of Schedule C is reprinted as Appendix G herein.

After the Bernards filed their petition, November 13, 1991 was set as the date for their meeting of creditors. On November 13, 1991, the Bernards attended the meeting and were examined at length by their chapter 7 trustee, Jeffrey C. Coyne. At the end of the meeting, Coyne requested additional documentation from the Bernards. Coyne then concluded the meeting by stating that if the Bernards supplied the requested documents prior to December 2,

1991, the Bernards would not be required to attend a further examination which Coyne had set for December 2, 1991.

Prior to December 2, 1991, the Bernards supplied Coyne with the requested documentation. As a result, the Bernards did not attend the December 2, 1991 examination. Thereafter, Coyne did not send the Bernards, or their counsel, any notice complaining of the Bernards nonattendance on December 2, 1991. Nor did Coyne ever testify in any hearing in this matter or state in any declaration submitted in this matter that he had continued the December 2, 1991 examination.

On December 5, 1991, counsel for Coyne wrote counsel for the Bernards requesting, for the first time, that he be sent certain documentation regarding the Bernards' annuity policy. A copy of

the December 5, 1991 letter is reprinted as Appendix H herein. The letter from counsel for Coyne is particularly notable because nowhere in the letter did counsel state that the Bernards' examination was being continued from December 2, 1991 to another date.

On January 9, 1992, counsel for the Bernards' responded to counsel for Coyne by sending the requested annuity documentation to counsel for Coyne. A copy of the January 9, 1992 letter to counsel for Coyne is reprinted as Appendix I herein.

From January through March of 1992, neither Coyne, nor his counsel mentioned that either the Bernards' examination or the Bernards' meeting of creditors was being continued.

On March 11, 1992, a status conference was held in the Bernards' bankruptcy

case. After the hearing was over, Coyne's counsel asked about the Bernards' annuity policy. Counsel for the Bernards then informed counsel for Coyne that any objection to the annuity policy would be untimely because the 30 day deadline for exemption objections had already expired pursuant to National Bankruptcy Rule 4003.

On March 18, 1992, Coyne mailed the Bernards' counsel a letter 'resetting' the Bernards' examination for April 6, 1992. This was the first notice from Coyne, following the November 13, 1991 meeting of creditors, that Coyne was seeking to 'reset' the Bernards' examination.

Contrary to the facts set forth in the Opinion, counsel for Coyne then signed and served Coyne's exemption objection on April 3, 1992, <u>not</u> April 6, 1992.

See Bernard, 40 F.3d at 1030.

A copy of Coyne's notice of exemption objection, which was limited solely to the Bernards' annuity policy, is reprinted as Appendix J herein. Thus, based on the signing and service of Coyne's exemption objection three days prior to April 6, 1992, it is clear that neither the newly requested documents, nor the 'reset' examination of the Bernards, were necessary for Coyne to file his exemption objection. In fact, Coyne's expressed need for a 'reset' examination was merely a ploy by Coyne to evade the 30 day deadline set forth in Bankruptcy Rule 4003.

On April 6, 1992, the 'reset' examination did not take place. Instead, it was 'reset' again for April 27, 1992.

On April 27, 1992, the Bernards appeared at their 'reset' examination and were examined at length. On June 8, 1992, the Sheaffers then filed exemption objections to the Debtors' entire list of exemptions, including the Bernards' annuity policy, homestead and prepetition wage claim.

The hearing on the exemption objections was subsequently held on July 1, 1992. Coyne did not appear at the hearing and did not testify on any issue, including whether he had concluded the Bernards' November 13, 1991 meeting of creditors or whether he had continued the Bernards' December 2, 1991 examination. Further, neither counsel for Coyne nor counsel for the Sheaffers offered any declarations into evidence. As a result, the only evidence properly before the trial court

was the Bernards' bankruptcy petition which the trial court had been requested to take judicial notice of.

Notwithstanding the lack of evidence, and the fact that Coyne and the Sheaffers had the burden of proving the Bernards' exemptions were not properly claimed, see Fed. R. Bankr. P. 4003(c), the trial court upheld both Coyne's and the Sheaffers' exemption objections in their entirety. The trial court based its decision on two grounds. First, the trial court reversed the burden of proof set forth in Bankruptcy Rule 4003(c), and found that the Bernards had failed to carry 'their' purported burden of proving that Coyne's and the Sheaffers' objections were untimely. Secondly, the trial court concluded that Coyne's and the Sheaffers' exemption objections were substantively proper based upon the

applicable statutes and case authorities.

An order upholding Coyne's and the Sheaffers' exemption objections was entered by the trial court on July 23, 1992. Since no testimony was offered, nor declarations introduced into evidence, the bankruptcy court made no findings of fact with respect to the order.

The Bernards timely filed their Notice of Appeal from the bankruptcy court's order on July 29, 1992. On January 21, 1993, the United States District Court for the Central District of California filed its unpublished order affirming the decision of the bankruptcy court.

On February 5, 1993, the Bernards timely filed their Notice of Appeal to the United States Court of Appeals for the Ninth Circuit from the unpublished

order of the district court.

On June 8, 1994, the Bernards filed their motion requesting that Ninth Circuit Court of Appeals Judge Alex Kozinski disqualify himself from participating in this matter based on his wife's role as the supervising United States trustee for Coyne. In support of the motion, the Bernards submitted a copy of a memorandum which Judge Kozinski's wife, Marcy J.K. Tiffany, had previously submitted to her panel trustees, including Coyne. A copy of the memorandum is reprinted as Appendix K herein.

In the memorandum, Tiffany informed her panel trustees, among other things, that she had created "newly established evaluation teams" who were "responsible for reviewing and evaluating" the trustees in such areas as "objections to

exemptions", which Tiffany went on to note "often reflect[ed] a conscientious approach since many of these actions are pro bono in nature." Appendix K at K-13 (emphasis added).

On July 29, 1994, Judge Kozinski filed his published Order in which he declined to disqualify himself from participating in the appeal of this matter.

Thereafter, on November 21, 1994, the Ninth Circuit filed its published Opinion authorizing Coyne to sell the Bernards' homestead and upholding Coyne's exemption objection to the Bernards' annuity policy.

REASONS FOR GRANTING THE WRIT

The Ninth Circuit's decision should be reviewed because if it is allowed to stand it will have a devastating impact on debtors' fresh starts by eliminating any certainty debtors might have as to

when their exempt assets are free from challenge.

The Ninth Circuit's decision should also be reviewed because it conflicts with decisions of this Court and the Eleventh Circuit Courts of Appeals regarding the timing of and necessity for exemption objections. In so doing, the Ninth Circuit's decision capriciously punishes debtors who have the misfortune of living within the Ninth Circuit's jurisdiction, while at the same time creating grave uncertainty as to the marketability of all exempt property within the Ninth Circuit's jurisdiction.

Another reason for reviewing the Ninth Circuit's is that it fails to interpret a number of statutes and rules relating to debtors' exemptions according to their plain meaning.

Finally, the Order regarding Judge Kozinski's decision not to disqualify himself from hearing this matter should be reviewed because the Order presents an important issue as to when federal judges are required to disqualify themselves from hearing matters involving their spouses.

I. THE NINTH CIRCUIT'S BERNARD DECISION DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN TAYLOR v. FREELAND & KRONZ, AS WELL AS A DECISION OF THE ELEVENTH CIRCUIT COURT OF APPEALS.

In Taylor v. Freeland & Kronz, 503 U.S. ___, 112 S. Ct. 1644, 118 L. Ed. 2d 280 (1992), and Allen v. Green (In re Green), 31 F.3d 1098 (11th Cir. 1994), this Court and the Eleventh Circuit have both ruled that any challenge to the value of property which a debtor has claimed as exempt must be made within 30

days of the debtor's meeting of creditors. The Eleventh Circuit's ruling in Green is explicitly based on this Court's decision in Taylor, which is, in turn, based on the plain language of Bankruptcy Rule 4003(b) and Section 522(l). See Green, 31 F.3d at 1100 ("In Taylor, the Court made clear that the Bankruptcy Code places the burden on the trustee to object, in a timely manner, to any improper exemption claims. The trustee may not wait until the value of a contingent claim is established before deciding to object within the period allowed by Bankruptcy Rule 4003.")(citing Taylor, 503 U.S. at ___, 112 S. Ct. at 1648, 118 L. Ed. 2d at 281; 11 U.S.C. § 522(l); Fed. R. Bankr. P. 4003).

In contrast to the rulings of this Court and the Eleventh Circuit, the

Ninth Circuit has now held that a bankruptcy trustee does not have to challenge the value of a debtor's exempt homestead within 30 days of the debtor's meeting of creditors. See Bernard, 40 F.3d at 1032 ("[The only] timely objection [in this case was] . . . to the Bernards' annuity"). Instead, the Ninth Circuit has ruled that a bankruptcy trustee may literally wait years for an exempt homestead to appreciate in value beyond its fixed exemption amount. Once this has occurred, the bankruptcy trustee may then move to sell the hitherto exempt homestead without filing any exemption objection to the property. See Bernard, 40 F.3d at 1030 n.2. As a result, no debtor within the Ninth Circuit's jurisdiction can ever be sure that his or her exempt property is truly exempt

because a trustee is free under Bernard to sell the exempt property anytime he or she wants to, even though no timely exemption objection has been filed with respect to the property.

Accordingly, because the Ninth Circuit's Bernard ruling is in direct conflict with decisions of this Court and the Eleventh Circuit, and because the Bernard ruling puts debtors in the untenable situation of never knowing when their exempt property is truly free from challenge, certiorari should be granted to resolve the conflict presented in this case.

II. THE NINTH CIRCUIT'S BERNARD DECISION ALLOWS BANKRUPTCY TRUSTEES TO EVADE THE 30 DAY PERIOD SET FORTH IN TAYLOR v. FREELAND & KRONZ FOR OBJECTING TO DEBTORS' EXEMPTION CLAIMS.

In Taylor v. Freeland & Kronz, this

Court held that, where a debtor claims property as exempt, the exempt status of the property cannot later be contested if no timely objection is made to the debtor's exemption claim. Taylor, 503 U.S. at ___, 112 S. Ct. at 1648, 118 L. Ed. 2d at 281. For an exemption claim objection to be considered timely, the objection must be made within 30 days of the debtor's "initial creditors' meeting." Taylor, 503 U.S. at ___, 112 S. Ct. at 1648, 118 L. Ed. 2d at 281 (citing Fed. R. Bankr. P. 4003(b)).

In this matter, none of the Bernards' exemption claims were objected to within 30 days of their November 13, 1991 meeting of creditors. Nor were the Bernards' exemption claims objected to within 30 days of their continued December 2, 1991 examination. As a

result, no matter which date the Ninth Circuit used to measure the applicable 30 day period, the Ninth Circuit should have concluded, pursuant to Taylor, that all of the Bernards' exempt property passed out of their bankruptcy estate several months prior to the service of Coyne's exemption objection on the Bernards on April 3, 1993. See 11 U.S.C. § 522(l) ("Unless a party in interest objects, the property claimed as exempt . . . is exempt").

Instead, the Ninth Circuit held that Coyne's 'resetting' of the Bernards' examination for April 6, 1992, which was five months after the Bernards' meeting of creditors, and three days after Coyne's service of his exemption objection on the Bernards, created a 'new' 30 day

period for objecting to the Bernards' exemption claims. Such a holding, however, renders Taylor meaningless, by allowing bankruptcy trustees to engage in the ploy of unilaterally 'resetting' debtors' meetings of creditors months after a debtor's original meeting of creditors has been held merely so that the trustee can obtain a 'new' 30 day period for objecting to the debtor's exempt property.

Accordingly, because the Bernard decision conflicts with this Court's decision in Taylor by allowing bankruptcy trustees to establish, at their will, 'new' 30 day time periods for objecting to debtors' exempt property, certiorari should be granted to resolve the conflict presented in this case.

III. THE NINTH CIRCUIT'S BERNARD DECISION CONFLICTS WITH THE PLAIN MEANING OF A NUMBER OF STATUTES AND RULES APPLICABLE TO THIS PROCEEDING.

A. NATIONAL BANKRUPTCY RULE 4003 AND SECTION 522(l) OF THE BANKRUPTCY CODE.

The basic rule of statutory construction is to interpret a statute according to its plain meaning. See United States v. Ron Pair Enter., Inc., 489 U.S. 235, 109 S. Ct. 1026, 103 L. Ed. 2d 290 (1989). In Bernard, the Ninth Circuit has ignored this rule, along with the plain language of National Bankruptcy Rule 4003 and Section 522(l) of the Bankruptcy Code, by holding that the Bernards' exempt homestead may be sold by their bankruptcy trustee even though no timely exemption objection was filed with

respect to the homestead.

With regard to the timing of an exemption objection, Rule 4003 provides in pertinent as follows:

> "(b) The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors . . . or the filing of any amendment to the list or supplemental schedules . . . ."

(emphasis added).

With regard to the effect of an exemption objection which is either untimely or not made at all, Section 522(l) provides in pertinent part as follows:

> "The debtor shall file a list of property that the debtor claims as exempt . . . . Unless a party in interest objects, the property claimed

as exempt on such list is exempt."
(emphasis added).

Accordingly, because under the plain language of Rule 4003 and Section 522(l), Coyne should have been prevented from contesting the exempt status of the Bernards' homestead based on his failure to timely objection to the exempt homestead, certiorari should be granted to correct the Ninth Circuit's misapplication of Rule 4003 and Section 522(l).

B. SECTION 704.100 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

The Ninth Circuit's Bernard decision ignores the plain language rule with respect to Section 704.100 of the California Code of Civil Procedure by holding that the exemption provided for in Section 704.100 "only applies to life insurance polices", and not to annuity

policies. Bernard, 40 F.3d at 1032.

Section 704.100 provides in pertinent part that:

> "(a) Unmatured life insurance policies (including . . . annuity policies), but not the loan value of such policies, are exempt without making a claim. . . .
>
> (c) Benefits from matured life insurance policies (including . . . annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor."

(emphasis added).

Accordingly, because the Ninth Circuit has ignored the plain meaning of Section 704.100 in the Bernard decision by holding that Section 704.100 does not cover annuity policies, certiorari

should be granted to correct the Ninth Circuit's misapplication of Section 704.100.

V. JUDGE KOZINSKI'S ORDER IN WHICH HE DECLINED TO DISQUALIFY HIMSELF FROM HEARING THIS MATTER OVERLOOKS CERTAIN APPLICABLE PORTIONS OF SECTION 455 OF TITLE 28 OF THE UNITED STATES CODE.

In his Order, Judge Kozinski held that he did not have to disqualify himself from hearing this matter because his wife, Marcy J.K. Tiffany, who is the United States Trustee for the Central District of California, only exercised clerical supervisory control over Jeffrey C. Coyne rather than discretionary supervisory control. See Bernard, 31 F.3d at 845.

Judge Kozinski's Order, however, overlooks the plain language of Section 455(b)(5)(i) of Title 28 of the United

States Code, which is not cited in the Order. Section 455(b)(5)(i) states that a judge "shall" disqualify himself if "his spouse . . . [i]s a party to the proceeding, or an officer, director or trustee of a party . . . ." (emphasis added).

Judge Kozinski's Order also overlooks Section 455(b)(4) of Title 28, which is similarly not cited in the Order. Section 455(b)(4) states that a judge "shall" disqualify himself if he knows that "his spouse . . . has a financial interest in the subject matter in controversy . . . ." (emphasis added). Section 455(d)(4) of Title 28 goes on to define the words "financial interest" as meaning "a relationship as director, adviser, or other active participant in the affairs of a party . . . ."

In this case, Tiffany is the

supervising United States trustee for Coyne. As a result, Section 455(b)(5)(i)'s mandatory language required that Judge Kozinski disqualify himself from hearing this matter.

Section 455(b)(4)'s mandatory language should also have resulted in Judge Kozinski's disqualification not only because Tiffany has the authority to hire and fire Coyne, see 28 U.S.C. § 586(a)(1), but also because Tiffany, as demonstrated in the memorandum reprinted herein as Appendix K, supervises every aspect of Coyne's conduct as a bankruptcy trustee in the Central District of California.

Accordingly, because Judge Kozinski's Order presents an important issue as to when federal judges are required to disqualify themselves from hearing matters involving their

spouses, certiorari should be granted to resolve this issue.

CONCLUSION

WHEREFORE, Petitioners, Alan and Linda Bernard, pray that a writ of certiorari issue from this Honorable Court to review the judgment of the United States Court of Appeals for the Ninth Circuit in Bernard v. Coyne (In re Coyne), 40 F.3d 1028 (9th Cir. 1994), along with the Order of Judge Kozinski in Bernard v. Coyne (In re Coyne), 31 F.3d 842 (9th Cir. 1994). In the event the petition is granted, Petitioners pray that the judgment of the Ninth Circuit and the Order of Judge Kozinski be reversed and that the cause be remanded with directions to reverse both the order of the United States District Court for the Central District of California and the order of United States Bankruptcy Court

for the Central District of California.

Respectfully Submitted,

Richard Michael Moneymaker
Counsel of Record
Law Firm of Richard M. Moneymaker
700 South Flower Street, Suite 2102
Los Angeles, California 90017
(213) 622-1088
Attorneys for Petitioners,
Alan and Linda Bernard

APPENDIX A

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

In re: ALAN BERNARD; LINDA BERNARD,
Debtors.

ALAN BERNARD; LINDA BERNARD,
Plaintiffs-Appellants,

v.

JEFFREY C. COYNE, Chapter 7 Trustee; CLEMENT SHEAFFER; MARY SHEAFFER,
Defendants-Appellees.

No. 93-55255
D.C. No. CV-92-04727-DT
OPINION

Appeal from the United States District Court
for the Central District of California
Dickran M. Tevrizian, District Judge, Presiding

Argued and Submitted
June 8, 1994—Pasadena, California

Filed November 21, 1994

Before: Dorothy W. Nelson, Robert R. Beezer and Alex Kozinski, Circuit Judges.

Opinion by Judge Kozinski

OPINION

KOZINSKI, Circuit Judge.

This bankruptcy case presents both a procedural and a substantive question: first, whether objections to a debtor's claimed exemptions were timely under Bankruptcy Rule 4003(b); and second, whether a fully matured annuity policy is exempt under California law.

I

On October 7, 1991, Alan and Linda Bernard filed for relief under Chapter 7 of the Bankruptcy Code. Among the assets they claimed as exempt were $5000 in recently earned wages and a $250,000 annuity policy. As part of a process that has come to be known as pre-petition planning, the Bernards had extracted most of the value from their home by borrowing against the equity, and then, just ten days before filing for bankruptcy, bought the annuity with the borrowed money.

The Chapter 7 trustee convened the meeting of creditors under 11 U.S.C. § 341(a) on November 13, 1991. Understandably suspicious of the Bernards' annuity exemption claim, the trustee asked to see documents relating to the policy. Because the Bernards didn't have the documents with them, the trustee adjourned the meeting until December 2. He instructed the Bernards to bring the requested documents on that date or, preferably, to mail them to his office beforehand.

On December 2 the Bernards didn't show up. According to their attorney, Mrs. Bernard didn't attend because she thought the trustee had already been given the necessary documents; Mr. Bernard was recuperating from a serious operation.[1] On December 4, the trustee informed the Bernards that he was still waiting for the requested documents, particularly a copy of the annuity policy. After receiving some materials relating to the annuity but not the policy itself, the trustee notified the Bernards that the 341(a) meeting would reconvene on April 6, 1992. Though the Bernards attended this meeting, they again did not provide a copy of the annuity policy. The trustee filed a written objection to the Bernards' annuity exemption later that same day. After one additional continuance, the trustee concluded the 341(a) meeting on April 27.

On May 8, the debtors amended their list of exempt property by adding a car and a union pension fund. On June 5, the Sheaffers objected to the Bernards' exemption claims. The bankruptcy court held a consolidated hearing on July 1 to

[1]The Sheaffers, major creditors, dispute whether Mr. Bernard was disabled on the date of the meeting, but this is beside the point. The period within which to object to exemption claims remains open until 30 days after the 341(a) examination is concluded. A debtor's failure to show up for a scheduled 341(a) meeting, even if it is fully excused, will require a rescheduling of the meeting so the trustee can complete the examination. This automatically extends the time for creditors to object. Unexcused failure to attend a 341(a) meeting can, of course, result in sanctions, such as dismissal of the petition, *see* U.S. Bankr. Ct. Gen. Order 93-01 (C.D. Cal.), or assessment of the trustee's costs.

determine the validity of the trustee's and creditors' objections. At the hearing, the Bernards argued that all the objections were untimely under Bankr. R. 4003(b), because they had been filed more than thirty days after the conclusion of the 341(a) meeting. The bankruptcy court rejected this argument and sustained each of the objections. The Bernards then appealed to the district court, which affirmed the bankruptcy court's ruling.[2]

II

[1] Bankruptcy Rule 4003(b) states: "The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the [section 341(a) meeting] or the filing of any amendment to the list . . . unless, within such period, further time is granted by the court." The Bernards claim that none of the objections was timely because the 341(a) meeting concluded on November

[2]Though the Bernards initially claimed a $100,000 homestead exemption, they've effectively conceded that under Cal. Civ. Proc. Code § 704.730 they're entitled only to a $75,000 exemption. ER 474; Appellants' Opening Br. 28-29. The Bernards nonetheless contend that, by virtue of this exemption, their entire house should be excluded from the bankruptcy estate. We've twice rejected this argument. *See In re Hyman*, 967 F.2d 1316, 1319-20 (9th Cir. 1992); *In re Reed*, 940 F.2d 1317, 1321 (9th Cir. 1991). As we noted in *Reed*, Cal. Civ. Proc. Code § 704.730 merely gives debtors the right to a specified amount of money after a forced sale; it does not give debtors "an absolute right to retain the homestead itself." 940 F.2d at 1321. And, while Cal. Civ. Proc. Code § 704.800 does under some circumstances prevent the trustee from selling the debtor's homestead, it does so only when the bids received at the sale are less than the sum of all liens and encumbrances on the property plus the amount of the debtor's homestead exemption. *Hyman*, 967 F.2d at 1320. Thus, nothing in the California exemption statutes precludes the trustee from proceeding with a forced sale, even if the debtors' valuation of their home suggests that no equity is available for creditors. The trustee is merely barred from completing the sale if no bids above a minimum threshold are received. *Id.* at 1320 & n.9. The Bernards' line of argument is now deemed foreclosed in this circuit. *Cf.* Fed. R. App. P. 38; Bankr. R. 9011.

13, or at the latest on December 2, 1991, while the objections weren't filed until April 6 and June 5, 1992. The trustee contends that his objection was timely because the meeting didn't conclude until April 27.

The Bernards' argument that the 341(a) meeting concluded on November 13 is based on the following language in a recent Supreme Court case: "Rule 4003(b) gives the trustee and creditors 30 days from the *initial* creditors' meeting to object." *See Taylor* v. *Freeland & Kronz*, 112 S. Ct. 1644, 1648 (1992) (emphasis added). Because the initial session of the creditors' meeting occurred on November 13, the Bernards argue, that's when the 30-day objection period began to run. We have no difficulty rejecting this argument. Bankruptcy Rule 2003(e) recognizes that the creditors' meeting can't always be completed in one session. It thus authorizes the trustee to adjourn the meeting "to enable the debtor to give additional testimony or to enable creditors to conduct additional examination." Bankr. R. 2003(e) cmt. e.

[2] Because the trustee and creditors may need to obtain information beyond that provided at the initial session before deciding whether to object, Bankr. R. 4003(b) starts the 30-day clock at the *conclusion* of the 341(a) meeting; the term "conclusion" would be superfluous if the rule contemplated that the 30-day objection period would always begin after the initial session.[3] *Taylor* didn't address this issue; the Court there referred to the "initial creditors' meeting" because the meeting happened to conclude after one session. The initial

[3]Starting the objection period after the initial 341(a) examination would also create perverse incentives for debtors to withhold information in the hope that the creditors will overlook a valid objection. Here, for example, debtors failed to bring documents relating to a major exemption claim to the November 13 meeting, even though the annuity policy had been purchased only a few weeks earlier. That debtors did not produce a copy of the policy until several months after the November 13 meeting, and eventually forced the trustee to raise an objection without examining the policy, raises a strong inference of manipulation.

session in *Taylor* thus marked both the beginning and the end of the 341(a) examination. Here, the debtor concedes that the trustee continued the November 13 meeting to December 2 — as he was entitled to do if he believed that the purposes of the 341(a) examination had not been fulfilled.

[3] The Bernards' alternative contention — that the 341(a) meeting concluded on December 2 — is also unpersuasive. The meeting could not conclude on that date because the Bernards never showed up. When the trustee exercised his power under Rule 2003(e) to adjourn rather than conclude the November 13 meeting, he reserved the right to make further inquiry into the Bernards' financial affairs. By failing to attend the meeting, the Bernards frustrated the trustee's entirely legitimate effort to determine whether the debtors' claimed exemption was valid. They thereby forfeited any right to have the meeting conclude on that date.[4]

[4] In light of the Bernards' failure to appear, the 341(a) examination period remained open and the trustee was entitled to schedule another meeting to complete the examination. After efforts to obtain the annuity documents through debtors' counsel proved unsuccessful, the trustee decided to resume the creditors' meeting on April 6 and then again on April 27. Because the trustee did not continue the meeting further, the

[4]Even if debtors attend a 341(a) meeting and provide the requested information, the information may prove inadequate, or it may point to other sources. The trustee therefore has broad discretion whether to adjourn or conclude the meeting. Of course, the trustee may keep the 341(a) examination open only so long as there are legitimate grounds for believing that further investigation will prove fruitful. If debtors believe the trustee has extended the 341(a) examination period for illegitimate reasons, their remedy is to petition the bankruptcy court for closure of the objection period. The objection period, however, remains open until 30 days after one of the following events: (a) the trustee concludes a 341(a) meeting without expressly continuing it to a later date, Bankr. R. 2003(e); (b) the trustee sends written notification to all those on the service list that the 341(a) examination period is closed; or (c) the bankruptcy court orders the examination period closed.

last day for raising objections to the debtors' exemption claims was May 27.

[5] The trustee's objection to the annuity was filed well before that date and thus was clearly timely. The creditors, on the other hand, didn't file their objections until June 5, which was too late. A new 30-day objection period did begin to run when the debtors amended their list of exempt property on May 8, but only with respect to the exemptions added via the amendment. *See, e.g., In re Kazi*, 985 F.2d 318, 323 (7th Cir. 1993); *In re Payton*, 73 B.R. 31, 33 (Bankr. W.D. Tex. 1987); *see also* 8 Lawrence P. King, Collier on Bankruptcy ¶ 4003.04[1], at 4003-10 (15th ed. 1994). Because the creditors' objections didn't pertain to either of the exemptions added by the amendments,[5] their June 5 objections were untimely. Because only the creditors objected to the Bernards' $5000 wage exemption claim, the bankruptcy court erred in denying the Bernards this exemption. *See Taylor*, 112 S. Ct. at 1648.

III

We turn, then, to the one timely objection: the trustee's to the Bernards' annuity. The Bernards first claim the annuity is exempt under Cal. Civ. Proc. Code § 704.100(a) as an unmatured life insurance policy.[6] Relying on our decision in *In re Moffat*, 959 F.2d 740 (9th Cir. 1992), the trustee counters that the annuity at issue here is fully mature and thus governed not by section 704.100(a), but by section 704.100(c).[7] This dis-

[5]In their Motion Objecting to Claim of Exemptions, the creditors did object to one of the newly-added exemption claims, the amendment relating to the car, *see* SER Tab 5, at 107-08, but the Bernards conceded during the bankruptcy court hearing that they weren't entitled to this exemption, ER 474.

[6]This section provides: "Unmatured life insurance policies (including endowment and annuity policies), but not the loan value of such policies, are exempt without making a claim."

[7]Cal. Civ. Proc. Code § 704.100(c) provides: "Benefits from matured life insurance policies (including endowment and annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor."

pute over the applicable provision doesn't matter, however, because the relevant language of the two subsections is identical and has been conclusively construed by our recent decision in *In re Pikush*, 157 B.R. 155 (9th Cir. BAP 1993), *aff'd*, 27 F.3d 386 (9th Cir. 1994).[8] There, we held that "the exemption provided by section 704.100(c) is limited to life insurance policies," and thus that annuity contracts which do not involve any "risks, contingencies or unknown events" are not covered by section 704.100(c) at all. *See* 157 B.R. at 159.

[6] Applying this reasoning to the identical language in section 704.100(a), we conclude that the Bernards' annuity is not exempt. Like the annuity contracts in *Pikush*, the Bernards' annuity provides a guaranteed stream of income over the term of the contract. There are no contingencies that can divest the Bernards of their right to receive payment; should Mr. Bernard die during the life of the contract, all remaining payments will be made to his designated beneficiaries. As noted in *Pikush*, an annuity of this nature is an investment, not a life insurance policy. *See id.* Because section 704.100 only applies to life insurance policies, the Bernards' annuity is not exempt under this provision.

[7] The Bernards next argue that their annuity is exempt under Cal. Civ. Proc. Code § 704.115.[9] Annuities are exempt under this provision only to the extent necessary to provide for the support of the debtor and the debtor's spouse and dependents upon retirement. The bankruptcy court found that the annuity payments weren't necessary for the Bernards'

[8]Though *Pikush* is a decision of our Bankruptcy Appellate Panel, we affirmed its ruling and incorporated its reasoning in a published opinion. *See* 27 F.3d at 386. It is thus the law of the circuit.

[9]This section provides that individual retirement annuities are "exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires." Cal. Civ. Proc. Code § 704.115(e).

support. ER 496-97. This finding is not clearly erroneous. The record indicates that Mr. Bernard, who is now 60 years old, earns in excess of $200,000 annually as a sound technician at Paramount Studios, and that he can expect to earn this amount for the next several years. In addition, the Bernards are entitled to substantial income from other sources upon retirement, including Social Security and pension benefits. The bankruptcy court therefore correctly held that the Bernards' annuity is not exempt under Cal. Civ. Proc. Code § 704.115.

AFFIRMED IN PART and **REVERSED IN PART.**

APPENDIX B

APPENDIX B

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

In re: ALAN BERNARD; LINDA BERNARD,

Debtors.

ALAN BERNARD; LINDA BERNARD,

Plaintiffs-Appellants,

v.

JEFFREY C. COYNE, Chapter 7 Trustee; CLEMENT SHEAFFER; MARY SHEAFFER,

Defendants-Appellees.

No. 93-55255

D.C. No. CV-92-04727-DT

ORDER

Filed July 29, 1994

COUNSEL

Richard M. Moneymaker, Moneymaker & Kelley, Los Angeles, California, for the plaintiffs-appellants.

Robert G. Uriarte, Milner, Uriarte & Lorch, Pasadena, California; Jamie R. Schloss, Los Angeles, California, for the defendants-appellees.

ORDER

KOZINSKI, Circuit Judge.

The parties to this appeal are the Bernards, debtors in a Chapter 7 bankruptcy proceeding pending in the Central Dis-

trict of California; creditors Clement and Mary Sheaffer; and Jeffrey C. Coyne, the Chapter 7 trustee. The central question presented in the case (which will not be answered here) is whether the trustee's objection to certain exemptions claimed by the debtors was timely.

Shortly after oral argument on June 8, 1994, the Bernards filed a motion asking that I disqualify myself under 28 U.S.C. § 455,[1] based on the fact that I am married to Marcy J.K. Tiffany, who is the United States Trustee for the Central District of California.[2]

---

[1]Section 455 provides:

> (a) Any . . . judge . . . shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> . . .
>
> (4) He knows that he . . . or his spouse or minor child . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
>
> (5) He or his spouse . . .
>
> (ii) Is acting as a lawyer in the proceeding;
>
> (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding
>
> . . . .

28 U.S.C. § 455(a)-(b). No motion is required to precipitate a judge's recusal under section 455. *See Davis* v. *Board of Sch. Comm'rs of Mobile County*, 517 F.2d 1044, 1051 (5th Cir. 1975); 13A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 3550 (1984). Parties *may* however, raise the issue by motion. *See Klenske* v. *Goo* (In re *Manoa Fin. Co.*), 781 F.2d 1370, 1373 (9th Cir. 1986) (per curiam) ("Though section 455 is stated in terms of a self-enforcing obligation upon the judge, it may be invoked by a party.").

[2]The United States Trustee is an officer of the Department of Justice, appointed by the Attorney General pursuant to 28 U.S.C. § 581.

1. Who Rules on the Motion?

The initial decision whether or not to sit in a case rests with the individual judge. Under the canons of judicial ethics, every judicial officer must satisfy himself that he is actually unbiased toward the parties in each case and that his impartiality is not reasonably subject to question. To assist judges in carrying out this bias-check the parties are required to list those entities that have an interest in the case. *See* Fed. R. App. P. 26.1 & advisory committee's note. For the same reason, judges must file yearly financial disclosure reports, listing the entities in which they have an interest. 5 U.S.C. app. §§ 101-102. The court also has various internal mechanisms — invisible to the litigants — to reduce the risk of conflict. For example, a judge may give the clerk of court a list of parties in whose causes he may not sit; the assignment of cases is then monitored to ensure that the judge is not assigned to cases involving those parties. If a judge notices a conflict in a case already assigned to him, he usually removes himself long before the parties learn of the assignment.

Despite these precautions, parties occasionally come to believe that a judge who has not disqualified himself should do so. They are entitled to file a motion for disqualification, as the Bernards have done here. Such a motion is filed in the case docket and referred to the full panel. However, the somewhat surprising (and not entirely comfortable) reality is that the motion is addressed to, and must be decided by, the very judge whose impartiality is being questioned. *See, e.g., United States* v. *Sibla,* 624 F.2d 864, 868 (9th Cir. 1980); *United States* v. *Balistrieri,* 779 F.2d 1191, 1202-03 (7th Cir. 1985) ("Section 455 clearly contemplates that decisions with respect to disqualification should be made by the judge sitting in the case, and not by another judge."). Neither section 455, nor the Federal Rules of Appellate Procedure, nor our local rules contain a mechanism for referring disqualification motions to someone else.[3] *See Schurz Communications, Inc.* v. *FCC,* 982

[3]By contrast, if a party files an affidavit properly alleging prejudice on the part of a district judge under 28 U.S.C. § 144, the judge must turn the

F.2d 1057 (7th Cir. 1992) (Posner, J.) (other judges on panel decline to consider petition to disqualify third judge). Like it or not, therefore, the responsibility for ruling on the Bernards' motion devolves on me alone.

2. Do I Disqualify Myself?

The Bernards contend that my impartiality is subject to question because my wife has a stake in the outcome of the proceedings. In support of this claim they argue that my wife is Mr. Coyne's supervisor and therefore has an interest in the outcome of the case. They also point out that, by statute, the U.S. Trustee may herself participate as a party in every bankruptcy case; this potential participation, the Bernards argue, is enough of an interest to require my recusal.

Section 455 requires not only that a judge be subjectively confident of his ability to be evenhanded, but also that an informed, rational, objective observer would not doubt his impartiality. *United States* v. *Winston*, 613 F.2d 221, 222 (9th Cir. 1980). After careful examination of the circumstances of this case, I have determined that my wife's position as U.S. Trustee does not affect my impartiality, as I do not feel any bias for or against any of the parties here.

The question of appearances is more difficult; human nature being what it is, we would all like to believe that no objective observer would ever doubt our impartiality. *See SCA Servs., Inc.* v. *Morgan*, 557 F.2d 110, 116 (7th Cir. 1977) ("Because a judge must apply the standard [of section 455] both as its interpreter and its object, the general standard is even more difficult to define. [There is a] philosophical

---

matter over to a colleague. But section 144 applies only to district judges, not appellate judges. *See id.* ("proceeding in a *district* court") (emphasis added); *Pilla* v. *American Bar Ass'n*, 542 F.2d 56, 58 (8th Cir. 1976) (section 144 doesn't apply to federal appellate judges).

dilemma created by this objective-subjective conundrum . . . ."). Fortunately, there is a source of objective advice for federal judges confronting sensitive disqualification questions. The Judicial Conference of the United States has established a committee, consisting of federal judges, "[t]o provide advice on the application of the Code of Conduct for United States Judges." Jurisdictional Statement of the Committee on Codes of Conduct of the Judicial Conference of the United States. Although judges are neither required to consult the committee nor bound by its rulings, the committee provides invaluable guidance and a detached viewpoint.

Mindful of the possibility that an objective observer might question my participation in this appeal, I wrote to the Committee on Codes of Conduct on April 28, 1994. I advised the committee of the role played by the United States Trustee in bankruptcy cases, and particularly in those brought under Chapter 7 of the Code. I noted that the U.S. Trustee and her staff are routinely involved in the administration of all Chapter 7 cases. The U.S. Trustee screens a panel of potential Chapter 7 trustees, 28 U.S.C. § 586(a)(1), and is responsible for the assignment of panel members to individual cases, although the trustee is formally appointed by the bankruptcy court. The U.S. Trustee sets guidelines for Chapter 7 trustees, but she has no control over the legal positions taken in a case by an individual trustee. Once appointed, a Chapter 7 trustee can be removed from a case only by order of the bankruptcy court. 11 U.S.C. § 324. The U.S. Trustee can, however, remove or suspend trustees from the panel for performance or other reasons.

I also noted that, from time to time, the U.S. Trustee's office participates substantively in individual cases. The U.S. Trustee can "convene and preside at" the initial creditors' meeting (the "341(a) meeting"). 11 U.S.C. § 341(a); Fed. R. Bankr. P. 2003(a). She may herself serve as the trustee in a case, 28 U.S.C. § 586(a)(2), although she rarely does. She may also intervene and appear at any level of the proceedings

from the bankruptcy court on, 11 U.S.C. § 307, as either a party or an amicus. Because the U.S. Trustee has no control over the legal positions taken by the Chapter 7 trustee, she occasionally takes positions before the court that are different from those of individual trustees.

On May 27, 1994, the Committee on Codes of Conduct responded to my inquiry. Commenting on the U.S. Trustee's supervisory role over Chapter 7 trustees, the committee focused on the

> difference between supervisory control which is clerical as opposed to supervisory control which is discretionary. Clerical matters include the issuance of operating instructions to the debtors, the appointment of creditors committees, etc.
>
> These . . . perfunctory administrative tasks . . . involve the United States Trustee in such a tangential way that you would not be required to recuse.

The committee then noted two circumstances where recusal would be advised. First, it wrote that

> [u]nder . . . circumstances where the United States Trustee is actually a party or where she has chosen to appear as amicus, we agree with your conclusion that you should recuse yourself.

Second, the committee advised that "in a high profile case involving your wife which could significantly aid or hinder her career, you would naturally be required to recuse."

I am persuaded by the committee's analysis, and conclude that I need not disqualify myself. The Bernards' case is a low-profile case where the U.S. Trustee's office has performed only routine administrative functions. *Compare* Katrina M. Dewey, *Moral Bankruptcy*, California Lawyer, July 1994,

at 35. Although the U.S. Trustee is required to convene and preside at the 341(a) meeting, 11 U.S.C. § 341(a), she may assign these functions to a designee. *See id.* § 102(9) (" 'United States trustee' includes a designee of the United States trustee"). The Bernards don't allege that anyone from the U.S. Trustee's office actually conducted the 341(a) meeting in this case; instead, the Chapter 7 trustee was automatically designated and presided at the meeting. The Bernards don't allege that the U.S. Trustee or her staff have been involved in the case in any other substantive way, nor does the record disclose any such involvement.

The Bernards cite a memorandum from the U.S. Trustee to all Chapter 7 trustees as evidence of her direct involvement in their activities.[4] The administrative or managerial interest

[4]Because most readers will not have the Bernards' motion, I quote here a bit of the memorandum to a give a sense of its content:

July 22, 1992

MEMORANDUM

TO:	ALL PANEL TRUSTEES
FROM:	MARCY J.K. TIFFANYUNITED STATES TRUSTEE
RE:	NEW UNITED STATES TRUSTEE PROGRAM POLICIES REGARDING CHAPTER 7 OVERSIGHT

. . .

The review of trustees will be conducted by newly established evaluation teams composed of an attorney and a paralegal. Each trustee will be assigned to a particular team, which will be responsible for reviewing and evaluating the trustee in each of the areas discussed below.

. . .

3. Section 341 Meetings

Periodically, a member of the trustee's assigned evaluation team will attend a meeting of creditors to evaluate whether the trustee asked appropriate questions, identified irregularities in

expressed in the memorandum is not the sort of substantive involvement in a particular case the committee suggested might warrant my recusal. Instead, it is precisely what the committee described as "clerical" supervisory control.

The Bernards also make what I understand to be a formalistic argument in support of their disqualification motion. They argue that because their brief, as well as that of the trustee, listed Marcy J.K. Tiffany as an interested party, everyone is estopped from denying that she is. Not so. Parties are encouraged to err on the side of caution in listing who might be deemed to be an interested party. Judges can then make a fully informed decision whether that party is indeed interested and, if so, whether the interest is such as to require the judge's disqualification. The information provided in the certificate of interested parties is thus the beginning of the analysis, not the end. If disqualification is not otherwise called for, the fact that someone is identified as an interested party in the briefs has no independent significance.

In seeking the advice of the Committee on Codes of Conduct, I mentioned that my wife's name is sometimes listed in the certificate of interested parties, and is included on the service list in all bankruptcy cases pending in the Central District of California. I noted that parties often carry the service list forward on appeal without removing her name. In its response, the committee agreed that what matters is *actual* participation in the case by my wife or her staff, rather than any formal designation by the parties.

Accordingly, I conclude that my initial decision not to disqualify myself was correct.

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petitions, and imposed necessary follow up deadlines.

9. Pleadings

The evaluation team will periodically review the trustee's pleadings for timeliness, sufficiency, necessity and the trustee's demonstrated level of knowledge and compliance with United States Trustee policies.

3. Should I Impose Sanctions?

Both the trustee and the Sheaffers, major creditors who have chosen to participate in this appeal, vigorously opposed the motion to disqualify. The Sheaffers argue that the motion is untimely and was brought in bad faith; they ask for sanctions amounting to the attorneys' fees they have expended in opposing the motion.[5]

The Sheaffers make two arguments in support of their request for sanctions. The first is that the motion is untimely because it was not brought until after oral argument. They suggest that the Bernards' counsel waited to see how his argument would be received and, being unhappy with the questions he was asked, decided he might be better off with another judge.[6] Second, the Sheaffers argue that the Bernards' counsel is improperly impugning my integrity in the hope of manufacturing bias or the appearance thereof where none was there to begin with.

There is certainly something to the Sheaffers' timing argument. The names of the judges to whom a case will be sub-

---

[5] Because I find that the Bernards' motion is not frivolous, I needn't address whether sanctions for frivolous motions may be imposed under Fed. R. App. P. 38 or 28 U.S.C. § 1912.

[6] The Senate Judiciary Committee warned of section 455's potential for misuse:

> [I]n assessing the reasonableness of a challenge to his impartiality, each judge must be alert to avoid the possibility that those who would question his impartiality are in fact seeking to avoid the consequences of his expected adverse decision. . . . Nothing in this proposed legislation should be read to warrant the transformation of a litigant's fear that a judge may decide a question against him into a "reasonable fear" that the judge will not be impartial. Litigants ought not have to face a judge where there is a reasonable question of impartiality, but they are not entitled to judges of their own choice.

S. Rep. No. 419, 93d Cong., 1st Sess., at 5 (1973).

mitted for decision are available from our clerk's office on the Monday preceding the week of oral argument. In this case, the names were made public on May 30th, 9 days before oral argument on June 8th. While counsel are not required to avail themselves of this information, competent lawyers make a point of knowing the panel before whom they will be arguing, if only to familiarize themselves with opinions those judges may have written on issues pertinent to the case. Identifying a possible conflict of interest is yet another reason for learning the names of judges at the earliest possible time. Nevertheless, we do not require counsel to learn the names of the judges, and counsel for the Bernards, Richard Moneymaker, has declared under penalty of perjury that he did not know the identity of the judges who would hear this case until the day of oral argument. Surprising as this is, given counsel's many years of experience in the courts of this circuit, I have no basis for doubting his representation. Where counsel did not have the information supporting the disqualification motion until the time of oral argument, there is no basis for imposing sanctions based on the timing of the motion.[7]

I must also reject the Sheaffers' second argument. A motion to disqualify does not impugn the integrity of the judge whose impartiality is being questioned. As noted, section 455 has both a subjective and an objective component, and the Bernards have never suggested that I am subjectively biased against them.[8] They argue only appearances, that my

[7]The Sheaffers also argue that the Bernards should have made the motion for disqualification orally as soon as they learned the identity of the panel. Counsel for the Bernards responds reasonably enough that he was nonplused by seeing me on the panel, and wanted to verify that my wife was still the U.S. Trustee before moving for my recusal.

[8]Even if the Bernards *had* impugned my integrity, it is far from clear that this would be grounds for sanctions. Parties and their counsel are entitled to question the impartiality of the judges before whom they appear, *see, e.g.*, 28 U.S.C. § 144, and judges have a professional responsibility not to take such challenges personally. Service as a public official means that one may not be viewed favorably by every member of the public. Federal judges have the extraordinary protections of life tenure to shield them from such pressures.

impartiality might reasonably be questioned in light of my wife's well-known participation in bankruptcy cases in the Central District of California. While I have rejected this argument, it is not frivolous, as witnessed by my decision to write to the Committee on Codes of Conduct long before the Bernards filed their motion.

Counsel for a party who believes a judge's impartiality is reasonably subject to question has not only a professional duty to his client to raise the matter, but an independent responsibility as an officer of the court. Judges are not omniscient and, despite all safeguards, may overlook a conflict of interest. A lawyer who reasonably believes that the judge before whom he is appearing should not sit must raise the issue so it may be confronted and put to rest. Any other course would risk undermining public confidence in our judicial system.

The papers filed by the Bernards seeking my disqualification fall squarely within the range of professionally appropriate conduct, as do the opposition papers filed by the trustee and the creditors. While it is regrettable that this has necessitated the expenditure of money and attorneys' time, there is no basis for shifting the entire cost to the Bernards. The order in this case is being published in the hope of avoiding such expenses in future cases by articulating the standards governing my participation in bankruptcy cases from the Central District of California so long as my wife is the U.S. Trustee there.

Accordingly, the motion for disqualification is DENIED, as is the Sheaffers' motion for sanctions.

APPENDIX C

APPENDIX C

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

District Case No. CV 92-4727-DT

Bankruptcy Case No. LA 91-94096-VP

[Chapter 7]

In re ALAN and LINDA BERNARD,

Debtor(s).

ORDER AFFIRMING BANKRUPTCY COURT'S RULING SUSTAINING OBJECTIONS TO DEBTORS' CLAIM OF EXEMPTION

[Filed January 20, 1993]

The hearing upon the Debtors' appeal from the Order of the Bankruptcy Court entered on or about July 23, 1992, came before United States District Court Judge Dickran Tevrizian in Room 880, 8th Floor of the Edward R. Roybal Federal

Building on January 4, 1993 at 10:00 a.m.

Richard M. Moneymaker of the Law Firm of Richard M. Moneymaker appeared and represented Alan and Linda Bernard, the debtors and appellants in this matter. Jamie R. Schloss of the Law Office of Jamie R. Schloss appeared and represented Clement and Mary Sheaffer, creditors and appellees. William C. Sias of the law offices of Coyne, Milner, Uriarte & Lorch appeared and represented Jeffrey C. Coyne, the Chapter 7 Trustee and appellee in this matter.

Based on the pleadings and evidence submitted to the District Court on this appeal and arguments of counsel at the time of the hearing, the Court makes the following rulings:

1. The Bankruptcy Court's decision

that the objections of the Trustee and creditors Clement and Mary Sheaffer were timely filed is not clearly erroneous and that decision is affirmed.

2. The Bankruptcy Court's decision that the proceeds of the National Home Life annuity were not reasonably necessary for the support of the judgment debtor is not clearly erroneous and that decision is affirmed.

3. The Bankruptcy Court's decision sustaining the objection of the Trustee and creditors Clement and Mary Sheaffer to the Debtors' claim of an exemption in the National Home Life Annuity is not clearly erroneous and that decision is affirmed. The District Court further finds that the National Home Life Annuity was a mature annuity.

4. The Bankruptcy Court's decision sustaining the objection of the

creditors Clement and Mary Sheaffer to the Debtors' claim of a homestead exemption in the amount of $100,000.00 pursuant to California Code of Civil Procedure § 704.720(a) is not clearly erroneous and that decision is affirmed.

5. The District Court further finds that there is no equity in the Debtors' personal residence. This finding is made without prejudice.

6. The Bankruptcy Court's decision sustaining the objection of the creditors Clement and Mary Sheaffer to the Debtors' claim of a $5,000.00 exemption in cash proceeds pursuant to California Code of Civil Procedure § 704.070 is not clearly erroneous and that decision is affirmed.

7. The Bankruptcy Court's decision sustaining the objection of the creditors Clement and Mary Sheaffer to

the Debtors' claim of an exemption in the Debtors' 1979 Chevrolet Camaro is not clearly erroneous and that decision is affirmed.

IT IS SO ORDERED

/s/ Dickran Tevrizian

THE HONORABLE DICKRAN TEVRIZIAN

UNITED STATES DISTRICT COURT

Respectfully submitted,

COYNE, MILNER, URIARTE & LORCH

By: /s/ William C. Sias

William C. Sias

Attorneys for Jeffrey C. Coyne

Chapter 7 Trustee

Appellee

SERVICE LIST

Richard M. Moneymaker, Esq.

John D. Munding, Esq.

Law Firm of Richard M. Moneymaker

700 S. Flower Street, Suite 2102

Los Angeles, California 90017

Jamie R. Schloss

10100 Santa Monica Blvd., Suite 750

Los Angeles, California 90067

Alan Bernard and Linda Bernard

7305 McCool Avenue

Los Angeles, California 90045

U.S. Trustee

221 North Figueroa Street

Suite 800

Los Angeles, California 90012-2601

APPENDIX D

APPENDIX D

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

Case No. LA 91-94096-VP

[Chapter 7]

In re ALAN and LINDA BERNARD,

Debtor(s).

ORDER ON TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTION OF ANNUITY

[Filed July 16, 1992]

The Trustee's objection to claim of exemption of an annuity came on for hearing on July 1, 1992 at 2:30 p.m. before the Honorable Vincent Zurzolo. William C. Sias of the offices of Coyne, Milner, Uriarte & Lorch appeared on behalf of Jeffrey C. Coyne, the moving party and duly appointed Chapter 7

Trustee. Jamie Schloss of the law offices of Jamie Schloss appeared on behalf of Clement Sheaffer and Mary Sheaffer. John Munding of the law offices of Richard Moneymaker appeared on behalf of Alan Bernard and Linda Bernard, the debtors.

The court makes the following evidentiary rulings:

1. The objections to the declaration of Clement Sheaffer are sustained; the first objection, pursuant to Federal Rule of Evidence § 702 that Mr. Sheaffer is giving improper opinion testimony is sustained; the second objection is sustained, on the grounds that pursuant to Federal Rule of Evidence § 402 that the statement is irrelevant and not admissible; the third objection is sustained pursuant to Federal Rule of Evidence § 702 on the grounds that the

declarant is giving improper opinion testimony.

2. The Debtors' evidentiary objection to the declaration of Jamie R. Schloss in reply to opposition re objections to claim of exemption for annuity is sustained on the grounds that the declaration is inadmissible hearsay.

The court has considered the Trustee's Notice of Trustee's Objection of Exemption for an Annuity; Memorandum of Points and Authorities; Declaration of Jeffrey C. Coyne in Support of Objection to Claim; Request for Judicial Notice of Debtor's Bankruptcy Petition and Schedules and Declaration of William Carl Sias; the Notice of Motion and Motion Objecting to Claim of Exemptions; Memorandum of Points and Authorities; Declaration of Clement Sheaffer and Jamie R. Schloss filed by creditors

Clement and Mary Sheaffer, together with their Reply to Opposition re Objection to Claim of Exemptions for Annuity, and Debtors' Response to Trustee's Objection to Claim of Exemption for Annuity and Declarations of Richard M. Moneymaker, John Munding and Frank Molloy, as well as Debtors' Response to Motion Objecting to Claim of Exemptions.

The objection of Clement and Mary Sheaffer to the Debtors' claim of a $100,000.00 homestead exemption in the house and lot located at 7305 McCool Avenue under California Code of Civil Procedure § 704.720(a) is sustained, and that the claimed exemption is denied.

The objection of Clement and Mary Sheaffer to the Debtors' claim of a $5,000.00 exemption in cash proceeds under California Code of Civil Procedure § 704.070 is sustained, and the claimed

exemption is denied.

The objection of Clement and Mary Sheaffer to the Debtors' claim of an exemption in the Debtors' 1979 Chevrolet Camaro is sustained and the claimed exemption is denied.

The objection of the Trustee and creditors Clement and Mary Sheaffer to the Debtors' claim of a $252,231.74 exemption in a private retirement plan issued by National Home Life pursuant to California Code of Civil Procedure § 704.715 is sustained and the claimed exemption is denied.

Dated: July 16, 1992

/s/ Vincent P. Zurzolo

Vincent P. Zurzolo

United States Bankruptcy Judge

Respectfully submitted,

COYNE, MILNER, URIARTE & LORCH

By: /s/ William C. Sias

William C. Sias

Attorneys for Jeffrey C. Coyne

Chapter 7 Trustee

SERVICE LIST

Richard M. Moneymaker, Esq.

John D. Munding, Esq.

Law Firm of Richard M. Moneymaker

700 S. Flower Street, Suite 2102

Los Angeles, California 90017

Jamie R. Schloss

10100 Santa Monica Blvd., Suite 750

Los Angeles, California 90067

Alan Bernard and Linda Bernard

7305 McCool Avenue

Los Angeles, California 90045

U.S. Trustee

221 North Figueroa Street

Suite 800

Los Angeles, California 90012-2601

APPENDIX E

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If any entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	H W J or C	Current Market Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption	Amount of Secured Claim
House and lot located at 7305 McCool Ave., Los Angeles, CA 90045; and more fully described as Lot 216 of Tract No. 1624, in the City of Los Angeles, County of Los Angeles, State of California, as per map	Home	C	400,000.00	412,000.00

recorded in Book 387
Pages 36 to 42
inclusive of Maps in
the office of the
County Recorder

APPENDIX F

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet property identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

Type of Property	None	Description and Location of Property	H W J C	Current Market Value of Debtor's Interest in Property Without Deducting Any Secured Claim or Exemption
1. Cash on Hand		None	J	0.00
2. Checking, savings, or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead		Security Pacific Bank Account Wages received in the last 90 days.	J	5,000.00
		Paramount Credit Union Acct. # 15830 Wages received in the last 90 days.	J	599.86

associations, or credit unions, brokerage houses or cooperatives			
3. Security deposits with public utilities, telephone companies, landlords, and others	None		0.00
4. Household goods and furnishings, including audio, video, and computer equipment.	Household goods	J	20,000.00
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape,	None		0.00

compact disc, and other collections or collectibles.			
6. Wearing apparel	Wearing Apparel		
7. Furs and Jewelry	Wedding Ring	J	7,250.00
		J	250.00
8. Firearms and sports, photographic, and other hobby equipment.			0.00
9. Interests in insurance policies. Name insurance company of each policy and itemize refund value of each	Prudential Life $50,000.00 paid up life insurance for Alan. Whole life on Linda value $1,668.86	J	1,668.86
10. Annuities, itemize and name each issuer	National Home Life Insurance Payable at age 62	J	252,231.74

11. Interests in IRA, Keogh, or other pension or profit sharing plans, itemize.			0.00
12. Stock and interests in incorporated and unincorporated businesses, itemize.	2242 Shares of Cell Communications-USA Inc.; 5477 Shares of Adtech Ill; 71 Shares of Molin No Value to any stocks	J	0.00
13. Interests in partnerships or joint ventures, itemize.	1/3 Partner in Cell Communications	J	0.00
14. Government and corporate bonds and other negotiable and non-negotiable instruments.	Promissory Note from Aaron Scott Bernard	J	20,000.00

15. Accounts Receivable.	None	J	0.00
16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	None	J	0.00
17. Other liquidated debts owing debtor include tax refunds. Give particulars.	Sublease of sound equipment to Paramount on a month to month tenancy terminal at will. Equipment leased to Debtor by Scott Bernard.	J	0.00
18. Equitable or future interests, life estates, and rights or powers exercisable for the	None		0.00

benefit of the debtor other than those listed in Schedule of Real Property.			
19. Contigent and non-contingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	None		0.00
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and right to set off claims. Give	Counter suit against Eugene Ashbrook	J	11,000.00

estimated value of each.			
21. Patents, copyrights, and other intellectual property. Give particulars.	None		0.00
22. Licenses, franchises, and other general intangibles. Give particulars.	None		0.00
23. Automobiles, trucks, trailers, and other vehicles.	1990 Cadillac Eldorado	J	20,000.00
24. Boats, motors, and Accessories.	None		0.00
25. Aircraft and accessories.	None		0.00

26. Office equipment, furnishings and supplies.	None	0.00
27. Machinery, fixtures, equipment and supplies used in business.	None	0.00
28. Inventory.	None	0.00
29. Animals.	None	0.00
30. Crop-growing or harvested. Give particulars.	None	0.00
31. Farming equipment and implements.	None	0.00

32. Farm supplies, chemicals, and feed.	None	0.00
33. Other personal property of any kind not already listed. Itemize.	None	0.00

APPENDIX G

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemption to which debtor is entitled under

(Check one box)

[ ] 11 U.S.C. § 522(b)(1) Exemptions provided in 11 U.S.C. § 522(d). Note: These exemptions are available only in certain states.

[x] 11 U.S.C. § 522(b)(2) Exemptions available under applicable nonbankruptcy federal laws, state or local law whre the debtor's domicile has been located for the 180 days immediately proceeding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of the Property Without Deducting Exemptions
House and lot located at 7305 McCool Ave., Los Angeles, CA 90045; and more fully described as Lot 216 of Tract No. 1624, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 387 Pages 36 to 42 inclusive of Maps in the office	704.720(a)	100,000.00	400,000.00

of the County Recorder.			
Security Pacific Bank Account Wages received in last 90 days.	704.070	5,000.00	5,000.00
Paramount Credit Union Acct. # 15830 Wages received in the last 90 days.	704.070	599.86	599.86
Household goods	704.020	20,000.00	20,000.00
Wearing Apparel	704.020	7,250.00	7,250.00
Wedding Ring	704.020	250.00	250.00
Prudential Life $50,000.00 paid up life insurance for Alan. Whole life for Linda value $1,668.86.	704.100	1,668.86	1,668.86

National Home Life Insurance Payable at age 62	704.115	252,231.74	252,231.74
1990 Cadillac Eldorado	704.010	1,200.00	20,000.00

APPENDIX H

COYNE, MILNER, URIARTE & LORCH
Attorneys and Counsellors at Law
215 North Marengo Avenue
Third Avenue
Pasadena, California 91101

Jeffrey C. Coyne
Marylin Jenkins Milner*
Robert G. Uriarte
Gary J. Lorch

Telephone
(818) 793-6244
---
(818) 793-1877

*also admitted in the District of Columbia

December 5, 1991

Richard M. Moneymaker, Esq.
Suite 2102, Broadway Plaza
700 South Flower Street
Los Angeles, CA 90017

Re: Alan and Linda Bernard
Case No. LA 91-94096-VZ

Dear Richard:

This shall confirm our telephone conversation of December 4, 1991, wherein you authorized me to contact your client Alan Bernard directly and request that he forward to your office all documentation respecting his annuity contract.

I spoke with Linda Bernard who advised me that she will forward to your office copies of the requested documents. Please forward these to me office as soon as possible.

Thank you in advance for your cooperation.

Very truly yours,

/s/ Robert G. Uriarte

Robert G. Uriarte

RGU/lbw

APPENDIX I

Law Firm of
RICHARD M. MONEYMAKER
Attorney at Law
Suite 2102, Broadway Plaza
700 South Flower Street
Los Angeles, California 90017
(213) 622-1088
Telecopier (213) 622-7002

Richard M. Moneymaker

I-1

January 9, 1992

Robert G. Uriarte, Esq.
Coyne, Milner, Uriarte & Lorch
215 North Marengo Avenue, Third Floor
Pasadena, California 91101

Re: Alan and Linda Bernard
Bankruptcy Case No. LA 91-94096-VP

Dear Bob:

Enclosed are two (2) Annuity Policies for Alan Bernard, both

dated September 28, 1991, showing that he holds a flexible premium with deferred annuity with no cash surrender value.

If you need any other documentation, please do not hesitate to call me.

Sincerely,

LAW FIRM OF RICHARD M. MONEYMAKER

/s/ Richard M. Moneymaker

RICHARD M. MONEYMAKER

RMM:rp

Enclosure

cc: Alan and Linda Bernard

APPENDIX J

APPENDIX J

William C. Sias

COYNE, MILNER, URIARTE & LORCH

215 North Marengo Avenue

Third Floor

Pasadena, CA 91101

(818) 793-6244

Attorneys for Jeffrey C. Coyne

Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

Case No. LA 91-94096-VP

In re ALAN and LINDA BERNARD,

Debtor(s).

NOTICE OF TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTION FOR AN ANNUITY

Date: May 28, 1992

Time: 2:30 p.m.

Ctrm: 2

201 N. Figueroa St.

Los Angeles, CA 90012

TO THE DEBTOR, HIS COUNSEL OF RECORD AND THE OFFICE OF THE UNITED STATES TRUSTEE:

PLEASE TAKE NOTICE that on May 28, 1992 at 2:30 p.m. in Courtroom 2 located at 201 N. Figueroa Street, Los Angeles, California 90012 or as soon thereafter as possible, before the Honorable Vincent P. Zurzolo, United States Bankruptcy Judge, Jeffrey C. Coyne, the duly appointed and acting Chapter 7 Trustee in the above-named matter, will move this court for an order allowing his objection to the debtor's claim of exemption. Grounds for objection to the

claimed exemption are that the purchase of the annuity is the result of impermissible pre-bankruptcy asset conversion, that the purchase constitutes a fraudulent conveyance under applicable state law and that the annuity was a matured annuity at the time of purchase and is not reasonably necessary for the debtor's retirement. The Trustee further requests that the Court determine the value, if any, of the amount reasonably necessary for the debtor's retirement purposes.

A copy of the Notice of Trustee's Objection to Claim of Exemption for An Annuity and Memorandum of Points and Authorities may be viewed at the United States Bankruptcy Court, 312 N. Spring Street, Room 906, Los Angeles, California during normal business hours or a copy may be obtained by contacting

the undersigned.

Dated: April 3, 1992.

By: /s/ William Carl Sias

William Carl Sias

Counsel for Trustee

PROOF OF SERVICE

I am over the age of eighteen years and not a party to this action. I am employed by the law firm of Coyne, Milner, Uriarte & Lorch, 215 North Marengo Avenue, Third Floor, Pasadena, California 91101. On the date shown below, at the direction of a member of said firm, who is a member of the Bar of this Court, I served the within NOTICE OF TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTION FOR AN ANNUITY

U.S. Trustee
221 N. Figueroa St.
Suite 800
Los Angeles, CA 90012

[SEE ATTACHED LIST]

by placing a true and correct copy thereof in envelopes addressed as shown, sealing and depositing them with first-class postage prepaid fully thereon in

the United States mail at Pasadena, California.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing shown in the affidavit.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Pasadena, California on the 3rd day of April 1992.

/s/ Lillian B. Wallace

APPENDIX K

APPENDIX K

U.S. Department of Justice

United States Trustee

Central District of California

---

221 N. Figueroa Street

Suite 800

Los Angeles, CA 90012-2601

Chapter 7 (213) 894-6387

Chapter 11 (213) 894-6811

FAX (213) 894-2603

July 22, 1992

MEMORANDUM

TO: ALL PANEL TRUSTEES

FROM: MARCY J.K. TIFFANY

UNITED STATES TRUSTEE

/s/ MARCY J.K. TIFFANY

RE: NEW UNITED STATES TRUSTEE PROGRAM POLICIES REGARDING CHAPTER 7 OVERSIGHT

As you know, the United States Trustee Program has recently refocused its efforts in the area of chapter 7 oversight. By now, you have all undoubtedly experienced the impact of some of the new initiatives that have been put into place. The purpose of this memorandum is to provide a comprehensive statement of the Program's current chapter 7 policies.

To set the state for this discussion, it is helpful to consider the comments of John E. Logan, Director of the Executive Office for United States Trustees, in a letter he sent to all United States Trustees on February 18, 1992.

> The primary duty of a chapter 7 trustee is to liquidate estate property as expeditiously as possible and to maximize the distribution to

creditors. 11 U.S.C. 704. The law also requires the trustee to be accountable for all property received, to furnish information concerning the estate and his or her administration of the estate as requested by parties in interest, to file a report accounting for his or her administration, and to otherwise faithfully perform his or her duties as a fiduciary.

We recognize that the tasks that confront chapter 7 trustees may vary considerably depending upon the circumstances presented in each case and that trustees must be allowed to exercise their business judgment, not only in pursuing litigation or claims but in managing the disposition of estate property. Nevertheless, the Program must ensure that trustees

adhere to their basic fiduciary obligations and act in accordance with the best interests of the estates in their charge.

These words effectively summarize the purpose and intent of the Program's policies on chapter 7 trustee review. The balance of this memorandum will address the details.

ORGANIZATION OF EVALUATION TEAMS

The review of trustees will be conducted by newly established evaluation teams composed of an attorney and a paralegal. Each trustee will be assigned to particular team, which will be responsible for reviewing and evaluating the trustee in each of the areas discussed below.

Moreover, I have recently established a new organizational structure in the Los Angeles office. Several "sections"

have been established to address specific areas of responsibility. By far the largest is the Chapter 7 Section. The Chief of the Chapter 7 Section is Larry Peterson, and the currently assigned sections members are: Mitchell Bernay, Karen Karnowski, Deidre Richards, Margaux Ross, John Sharkey and James Yobski. This section has, as its primary responsibility, the coordination of trustee oversight in Region 16.

Shortly, each trustee will be informed as to the members of their evaluation team, and a meeting with the team will be scheduled before the end of the year.

SPECIFIC REQUIREMENTS AND OVERSIGHT ACTIVITIES

1. Term of Appointment

All trustees will be on a one year renewable appointment. Sometime during the year, all trustees will receive an

annual evaluation, as discussed in paragraph 4, below. Based upon this evaluation, the trustee may or may not be reappointed for the following year.

2. Limitation on Number of Cases

In order to assure an equitable distribution of cases as well as their timely disposition, trustees with a case load in excess of 500 open asset cases will be suspended from rotation until their caseload drops to 400 asset cases or below. We recognize that many of you are above that number at present. Accordingly, we will provide you an adequate period of time to reduce your numbers to an appropriate level, which will be discussed at your initial meeting with your evaluation team. It is important that you make certain that your numbers agree with ours. Accordingly, on or before August 14,

1992, please provide us with a list of all your open chapter 7 asset cases. This will permit us to review and attempt to reconcile your records with ours prior to the meeting with your evaluation team.

3. Annual Review

At least once each year, the evaluation team will meet with their assigned trustee. At the meeting, the team will: identify any performance problems; discuss any deficiencies or other problems with the 180-day reports; evaluate the ability of the trustee to properly and timely administer cases; evaluate the trustee's responsiveness to the United States Trustee, the court and to creditor inquiries; determine the level of the trustee's knowledge of and involvement in the cases; address the trustee's concerns or questions;

evaluate the trustee's commitment to administering all cases; verify bond premium payments; and generally become familiar with the trustee's cases.

The date of the annual review will generally correspond with the alternate submission of the trustee's 180-day reports. For this year, however, each trustee will be evaluated by December 1992, and you will shortly be receiving a notice of the date and time of your 1992 evaluation meeting. Thereafter you will be provided at least one month's prior notice of your scheduled evaluation date.

4. 180-day Reports

Each 180-day report will be reviewed by the assigned evaluation team. The team will prepare a written review of the report which will be submitted to the panel trustee.

It is imperative that the 180-day reports are submitted on time. Unless the United States Trustee or Assistant United States Trustee has allowed an extension, failure to file the 180-day reports in a timely fashion will result in the suspension of the trustee from the panel until all delinquent reports have been received and reviewed.

5. Old Cases

One of the highest priorities of our revised chapter 7 oversight policy is to make certain that cases are closed in a timely fashion. The Program defines as "old" any case that was filed under or converted to chapter 7 more than three years prior to January 1 of the current calendar year (e.g. for 1992 this would be any case filed or converted prior to calendar year 1989).

If the number of "old" cases exceeds

10% of a trustee's overall caseload, absent a determination by the United States Trustee to the contrary, the trustee is to be removed from active rotation. The trustee will receive no new assignments until the "old" cases fall below 10% of the case load. At the same time we recognize that occasionally trustees receive reassigned cases from trustees that have recently left the panel. Usually, these are older cases and thus the trustee's percentage of old cases might be temporarily skewed. This will, of course, be considered by the United States Trustee in determining whether to suspend a trustee from rotation.

6. Bank Account Information

Pursuant to our newly instituted depository approval process, we now require that copies of all bank

statements be provided to the United States Trustee on a monthly or, if appropriate, a quarterly basis. We will be reviewing the statements of a random sampling basis. The purpose of the review is to verify that estate funds are held in interest-bearing accounts; that the financial information contained in the 180-day reports is accurate; that bond coverage is adequate; that bank collateral is sufficient; that estate funds have been promptly deposited; that court ordered disbursements have been timely made; and that no unauthorized fund transfers or check-kiting has occurred.

7. Operating Chapter 7 Business Reports

A trustee must obtain the approval of the United States Trustee prior to filing an application to operate a

business in a chapter 7 case. Prior to operating a business, you must arrange an interview with Geri Walsh who will advise you regarding financial procedures and the filing of operating reports. Normally, the trustee is expected to either close the case or convert it to a chapter 11 within a year of the entry of the order authorizing the operation of the business.

8. Section 341 Meetings

Periodically, a member of the trustee's assigned evaluation team will attend a meeting of creditors to evaluate whether the trustee asked appropriate questions, identified irregularities in petitions, and imposed necessary follow up deadlines.

9. Pleadings

The evaluation team will periodically review the trustee's

pleadings for timeliness, sufficiency, necessity and the trustee's demonstrated level of knowledge and compliance with United States Trustee policies. Pleadings that will be reviewed include employment applications, professional fee petitions, applications to sell assets, motion to abandon assets, objections to exemptions, objections to discharge, and adversary complaints. It should be noted in this regard that a trustee's objection to discharge, exemptions, or professional fees often reflects a conscientious approach since many of these actions are pro bono in nature.

10. Court Performance

United States Trustee attorneys routinely observe trustees' court appearances. Inadequate performance will be documented in the appropriate

file.

11. Assistance in 707(b) Cases

The trustee should provide assistance to the United States Trustee when a potential 707(b) case is identified. The trustee's failure or reluctance to provide assistance to the United States Trustee in such situations will be documented and considered in the trustee's annual assessment.

12. Public Complaints

The United States Trustee requests that all complaints concerning trustees be submitted in writing. The written complaint will be sent to the trustee requesting a response within a reasonable time. Each complaint is investigated independently and is not evaluated solely on the trustee's response. Immediate and appropriate remedial action will be taken on all

valid complaints. A copy of each complaint and the report of its investigation is maintained in an appropriate file. A pleading requesting the trustee to close a case, to abandon estate property, to distribute estate funds or seeking the removal of the trustee is considered to be a written complaint and will be investigated by the United States Trustee.

13. Declination of Case

If you must decline an appointment, please do so in writing. A valid conflict of interest is the only acceptable reason for refusal.

14. No Distribution Reports (NDR's)

We will be conducting a review of no distribution reports submitted by each trustee on a random sampling basis. A letter will be sent to the debtor in the sampled cases to verify whether the

debtor surrendered any estate property to the trustee.

15. Final Reports

Our goal is to reduce the review time of final reports to 60-days after they are received by this office, although it will be probably be some months before this will be a reality. A listing of the pre and post distribution reports reviewed, along with dates of receipt, dates of return to the trustee for changes, dates of return by the trustee, and dates of filing with the court will be maintained in the appropriate file.

16. Audits

Each trustee will receive either a limited scope audit by the Office of the Inspector General (OIG) or an Accelerated Restricted Scope Audit (ARS) conducted by the trustee's evaluation

team, every other year. If the audit determines the need for remedial action, the trustee is required to respond in writing within a set period from the receipt of the written audit report (45 days for an OIG audit and 30 days for an ARS audit). Whenever an audit report contains a consequential finding or a series of less consequential findings, a member of the evaluation team will make an on-site visit to the trustee's office to verify compliance within six months of the trustee's response.

During years when the trustee is not being audited, the evaluation team will make an office visit to the trustee to address any area which the trustee's file indicates may be necessary or appropriate. Any deficiencies or inadequacies will be documented and the trustee will be requested to make a

written response within a reasonable time confirming that corrective actions have been implemented.

17. REMEDIAL ACTIONS

The supervisory and monitoring responsibilities of the United States Trustee are directed toward ensuring that trustees adhere to fiduciary standards and improving the trustee's overall efficiency and effectiveness in administering cases. If we observe conduct that appears inconsistent with the bankruptcy laws or with the trustee's obligations to the estate, we will take prompt action to see that it is remedied. Where the trustee fails to promptly correct the problem, it is the Program's policy to initiate enforcement actions. Such actions include suspending the trustee from the panel; declining to reappoint the trustee to

the panel; seeking the removal of the trustee from the case; seeking the removal of the trustee from all cases; requesting that fees be disgorged or trustees surcharged; moving for the imposition of sanctions; filing formal complaints against trustees with state licensing boards; and referring appropriate matters to the United States Attorney for criminal investigation and prosecution.

CONCLUSION

The new policies regarding chapter 7 oversight are intended to help the system to function more effectively. As time goes on, you will be receiving additional information regarding additional policies and procedures that we will be initiating with respect to the handling of chapter 7 estates. I will be scheduling a general meeting in

August to discuss these initiatives with you and address any questions you may have. In the meantime, please feel free to contact me, Charmayne Mills or Larry Peterson to answer questions of a more immediate nature. Questions on specific cases should be addressed to a member of your assigned evaluation team.

I have frequently observed that I am lucky to have such a distinguished trustee panel as exists in Region 16. You are all professionals who enjoy excellent reputations in the bankruptcy community. Thus, I am certain that you will make your best efforts to help effectuate the Program's new focus in the area of chapter 7 oversight.